



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S, MNRL-S, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on July 15, 2018 (the “Application”). The Landlords sought the following: compensation for damage to the unit; compensation for monetary loss or other money owed; to recover money for unpaid rent; to keep the security deposit; for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; and reimbursement for the filing fee.

The Tenant appeared at the hearing with G.O. Nobody appeared at the hearing for the Landlords. I waited 10 minutes, until 9:40 a.m., to allow the Landlords to call into the conference and participate in the hearing set for 9:30 a.m. I then proceeded with the hearing in the absence of the Landlords.

The Tenant advised she vacated the rental unit in August. The Tenant referred to a previous hearing and gave me permission to look this previous hearing up. The file number for the previous hearing is on the front page of this decision. The parties had come to a settlement agreement to end the tenancy on August 5, 2018 and the Landlord had been issued an Order of Possession.

The Tenant provided affirmed testimony.

Issue to be Decided

1. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The Tenant testified as follows in relation to a tenancy agreement. There was an oral tenancy agreement between the Landlords and Tenant in relation to the rental unit. The tenancy started June 20, 2012 and was a month-to-month tenancy. She paid a \$250.00 security deposit at the start of the tenancy.

The Tenant testified that G.O. was not a tenant and never lived at the rental unit. The Tenant said G.O. should not be named on the Application. I have removed G.O. from the style of cause given the Tenant's position.

The Tenant testified that the Landlords still have her security deposit.

The Tenant testified that there was no move-in inspection done and she was never offered an opportunity to do an inspection. She said she was present when the Landlords looked around the rental unit near the end of the tenancy but that the Landlords did not do a written Condition Inspection Report.

Analysis

Policy Guideline 17 deals with security deposits and states in part at page two:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Rule 7.3 of the Rules of Procedure states that when a party fails to attend a hearing, the arbitrator can "conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply". Rule 7.4 of the Rules states that a party must present their evidence at a hearing.

Here, the Landlords failed to appear at the hearing to present their evidence or provide evidence in support of their claim. Given this, I dismiss the Application without leave to re-apply.

Based on the undisputed testimony of the Tenant, I find she did not extinguish her rights in relation to the security deposit under section 24 or 36 of the *Residential Tenancy Act* (the “*Act*”). I also note that the Landlords failed to appear and provide evidence that the Tenant did extinguish her rights in relation to the security deposit.

I find the Tenant is entitled to the return of the security deposit and I order the Landlords to return the deposit forthwith. The Landlords are to return the deposit to the mailing address for the Tenant as listed on the Application. I note that there is no interest owed on the security deposit as the amount owed has been 0% since 2009. I have issued the Tenant a Monetary Order in the amount of \$250.00 pursuant to section 67 of the *Act*.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlords must return the security deposit to the Tenant.

I have issued the Tenant a Monetary Order in the amount of \$250.00. If the Landlords do not return the security deposit to the Tenant, this Order must be served on the Landlords. If the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims Division) and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 12, 2018

Residential Tenancy Branch